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IN THE

Supreme Court of the United States

October Term, 1958.

No. 531.

HARRY J. ALKER, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for Rehearing.

HARRY J. ALKER, JR.,
1505 Land Title Building,
Philadelphia 10, Pa.,
Petitioner.

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PETITION FOR REHEARING.

Petitioner prays that this Court grant a rehearing of its Order of February 23, 1959, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit in the above entitled case as prayed for in the petition filed herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. Any alleged consent by petitioner that the trial should proceed without him was invalid nor would he be bound by his attorneys proceeding without him as he was too ill to consent and too ill to be bound by his not objecting to any action by his attorneys, and to proceed without him under such circumstances constituted a denial of due process.

For some time prior to the trial and during the trial, and a considerable time thereafter, petitioner was a very, very ill man and in great pain—having undergone several operations (including removal of part of stomach, bladder and part of spine) and been in and out of hospitals and sick beds—so much so that he would have consented to anything to avoid having to do anything. He was brought into Court on a stretcher at the opening of Court the first day, and taken away on a stretcher.

Because of petitioner's illness, his attorneys were unable to properly prepare the case or try the case.

Had his condition not existed, the attorneys would have been prepared to cross-examine and to answer all the charges and show petitioner's returns were correct. They would have shown many of the moneys alleged to have been received by petitioner were not income to him but moneys belonging to other people and were not moneys for services to petitioner. They would have been able to show petitioner was merely local counsel in many cases for attorneys of other counties, and in many cases the moneys represented his fees and costs and fees and costs due counsel associated with him in the matter. They would have been able to show heavy office and other expenses against the same. The Government relied upon statements of the alleged *receipts* by petitioner of moneys, but there is no evidence as to what they were or how they were disbursed or to whom they belonged. The inability of petitioner's attorneys to do so was all caused by petitioner's serious physical condition. The case should not therefore have gone on. There could be no justice under such circumstances, especially when it meant so much to petitioner. There could be no justice under such circumstances and after all that is what the United States sought.

2. The Court's adjourning the trial upon the close of the Government's case at the end of June, releasing the jury and then renewing the case in the middle of September,

more than two months later, constituted a denial of due process. Even the Court of Appeals indicated it had doubt regarding the effect of the delay. Even a Trial Judge would hesitate to state he could remember without notes all the pertinent facts of a trial conducted by him two months before. No jury could remember over that period what had been presented originally, and the average juror would overlook much that was important. To allow such a lapse of time to exist constituted a denial of due process. Petitioner denies that he was responsible for any such delay.

3. The taxes involved were based on jeopardy assessments from which appeals are pending in the United States Tax Court. Efforts to sit down with the Internal Revenue Service and show them no tax is due have been of no avail. Petitioner contends, if this were done, it would be found nothing was due.

4. The above errors are particularly serious in this case because the petitioner is a lawyer over seventy years of age who has practiced law more than forty-five years and was in good standing. To permit the conviction to stand is ruination to him, his family and his associates. As heretofore stated had petitioner not had such a prolonged illness and been so very, very sick and under such constant pain, his attorneys would have had his assistance and there could have been no conviction, as petitioner has a complete defense.

Equity and justice require that a new trial should be granted to petitioner so that he may prove his innocence as he is now physically able to assist his counsel and present a complete defense.

CONCLUSION.

For the reasons set forth above and in the petition for certiorari and that justice may be done to the petitioner, it is respectfully urged that rehearing be granted and that upon such rehearing a writ of certiorari issue to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

HARRY J. ALKER, JR.,
Petitioner.

CERTIFICATE.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 of the Rules of this Court.

HARRY J. ALKER, JR.,
Petitioner.